CONSTITUTIONAL LAW—DUE PROCESS OF LAW—WHITE AND NEGRO PUPILS. —Plaintiff in error, a corporation, was convicted of violating a statute of Kentucky which made it unlawful for any person or corporation to operate any college, school, or institution where persons of the white and negro races are both received as pupils for instruction and imposing a fine of $1,000 for violation of the statute. *Held,* as the state had reserved the power to alter or amend the charter of the corporation the statute did not, as applied to it, deny it due process of law nor did it otherwise violate the Federal Constitution. (Mr. Justice HARLAN and Mr. Justice DAY dissent.) *Berea College* v. *Kentucky* (1908), 29 Sup. Ct. 33.

The granting of a right to be a corporation rests entirely within the discretion of the state, and when granted may be accompanied with such conditions as the legislature may deem necessary. *Home Ins. Co.* v. *State of N. Y.,* 134 U. S. 594 at 600; *Horn Silver Mining Co.* v. *State of N. Y.,* 143 U. S. 305 at 312; *Dartmouth College Case,* 4 Wheat. 518. The act under which the college was incorporated provided that every grant of a franchise shall remain subject to alteration or revocation. Ky. St. 1903 (Carroll), p. 86, *Bill of Rights.* While under this power alterations or amendments to the charter may be made, these alterations or amendments must not defeat or substantially impair the object of the grant. *Comm. of Inland Fisheries* v. *Holyoke Water Co.,* 104 Mass. 446; *In the matter of Oliver Lee & Co.'s Bank,* 21 N. Y. 9; *Comm.* v. *Eastern R. R.,* 103 Mass. 254; *Holyoke Co.* v. *Lyman,* 15 Wall. 500. This statute does not forbid teaching the races separately, hence, it does not defeat or impair the object of the grant. The act need not be construed as a whole, since it is separable in so far as it is to be applied to persons and corporations and the unconstitutional part being separable from the remainder, the latter part, i. e., the part applying to corporations, is valid. *Warren et al.* v. *Mayor of Charleston,* 2 Gray 84; *Huntington* v. *Worthen,* 120 U. S. 97; *Allen* v. *Louisiana,* 103 U. S. 80; *Marshall Field Co.* v. *Clark,* 143 U. S. 649. The effect of the 14th Amendment was to extend the protection of the Constitution to a new class. *Slaughter House Cases,* 16 Wall. 36. It does not, however, guarantee social equality. *Cory* v. *Carter,* 48 Ind. 327. And the state may, in the exercise of its police power, enact laws which if they do not deprive the negro of a fundamental right are not within the purview of the Amendment. *State* v. *Hairston & Williams,* 63 N. C. 451; *State* v. *Jackson,* 80 Mo. 175 (prohibiting intermarriage); *People of State of N. Y. Ex rel Cisco* v. *Borough of Queens,* 161 N. Y. 598; *Lehen* v. *Brummell,* 103 Mo. 546 (prohibiting attendance at same school); *Smith* v. *State,* 100 Tenn. 494; *Chesapeake & Ohio R. R.* v. *Kentucky,* 179 U. S. 388 (providing special cars). The dissent is based on the ground that the act is not separable and that it violates the 14th Amendment.

CONSTITUTIONAL LAW—INTERSTATE COMMERCE—POWER OF CONGRESS TO REGULATE.—The "commodities clause" of the Interstate Commerce Act provides that after May 1st, 1908, it shall be unlawful for any railroad corporation to transport from one state to any other state any article or commodity

other than timber, manufactured, mined or produced by it, in whole or in part or in which it may have any interest except such as may be necessary for its use in its own business. Defendants are railroad corporations and own coal mines in Pennsylvania and ship the products thereof to other states. On bills in equity and petitions for mandamus on behalf of the United States against the defendants to restrain them from violating the "commodities clause," *held*, that the bills in equity must be dismissed and the petitions for writs of mandamus denied. (BUFFINGTON, Circ. J., dissents.) *United States* v. *Delaware & H. Co.*, — C. C., E. D., Pa. —, 164 Fed. 215.

The decision is based on two conclusions: 1. That the power to regulate is reviewable by the courts to determine its reasonableness. 2. That power to regulate does not include the power to entirely exclude from such commerce a legitimate article of commerce. Art. I, § 8, of the Constitution gives to Congress the power to regulate commerce among the several states. It has been repeatedly held that this power is absolute and complete in itself. *Gibbons* v. *Ogden*, 9 Wheat. 1; *The Barque Chusan*, 2 Story 455; *State of La.* v. *Kennedy*, 19 La. Ann. 397; *Scranton* v. *Wheeler*, 179 U. S. 141; *Lottery Cases*, 188 U. S. 321. It cannot be said as contended by the Government that this power is without limitation other than the will of Congress. MARSHALL in *Gibbons* v. *Ogden*, supra, recognized this limitation when he said, "This power is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions as are found in the Constitution of the United States," and this doctrine has been repeatedly affirmed. *Scranton* v. *Wheeler*, 179 U. S. 141; *Monongahela Navigation Co.* v. *United States*, 148 U. S. 312 at 336; *Union Bridge Co.* v. *United States*, 204 U. S. 364. This is a government of enumerated powers, and our very theory of government is opposed to the deposit of unlimited power. *Loan Association* v. *Topeka*, 87 U. S. 655 at 662. The grant of this power to Congress was to secure uniformity of commercial regulation. *County of Mobile* v. *Kimball*, 102 U. S. 691. The exercise of this power by Congress cannot be kept within limitations imposed by the Constitution unless the reasonableness of such regulation be inquired into by the courts. They must see that such legislation is not carried beyond its clear scope. *Chicago & N. W. Ry. Co.* v. *Osborne*, 3 C. C. A. 347; *Little Rock & M. R. Co.* v. *East Tenn. & G. R. Co.*, 47 Fed. 771 at 777. The interstate commerce commission has held that unless the carrier was allowed to transport its coal the result would be in effect a confiscation of its property. *In the matter of Atchison, T. & S. F. Ry. et al.*, 7 I. C. C. 33. This court has repeatedly inquired into the reasonableness of police regulations and whether they constituted an invasion of fundamental rights. *Barbier* v. *Connolly*, 113 U. S. 27; *Yick Wo* v. *Hopkins*, 118 U. S. 356; *Holden* v. *Hardy*, 169 U. S. 366; *Dobbins* v. *Los Angeles*, 195 U. S. 223. While by this act the defendants are not deprived of the legal title of the property, they are deprived of the right to transport it to other states, which is in effect to deprive them of the larger part of the property owned by them. No right of property of these defendants in or to the coal owned by them is so valuable or important as the right to transport

it over their own roads, and to deprive them of this is depriving them of a valuable property right, and hence unconstitutional. *Cummings* v. *Missouri*, 4 Wall. 277; *Ex Parte Garland*, 4 Wall. 333; *Dent* v. *West Virginia*, 129 U S. 114.

CONSTITUTIONAL LAW—SECRET SOCIETIES—UNAUTHORIZED WEARING OF BADGES.—A Montana statute (No. 1192 of the Penal Code of 1895 as amended by Session Laws of 1907, p. 24) provided that a person not a member thereof, who wore the badge or insignia of any secret fraternal organization of ten years' standing, should be guilty of a misdemeanor and subject to fine or imprisonment, excepting however from its operation the wives, daughters, sisters and mothers of members. Defendant was convicted under the statute of wearing an Elk badge, and on appeal the Supreme Court of Montana *held*, the statute was unconstitutional on the grounds, (1) it delegated legislative authority, and (2) it denied equal protection of the law. *State* v. *Holland* (1908), — Mont. —, 96 Pac. 719.

Statutes similar to this one have been passed recently in several of the states. N. J. Laws 1906, chap. 330; S. Car. Acts 1906, Act 76; Laws of N. Y. 1906, chap. 485. As yet there are no reported cases construing these statutes. The argument of the court in the principal case is that the immunity of the citizen is not to be made dependent upon a permissive rule or regulation of a society of which he has no knowledge or can obtain no knowledge. *O'Neil* v. *Am. Fire Ins. Co.*, 166 Pa. St. 72, 30 Atl. 943, 26 L. R. A. 715, 45 Am. St. Rep. 650. The exception is made for purely sentimental reasons, and equal protection of the law is a pledge of the protection of equal laws. *Yick Wo* v. *Hopkins*, 118 U. S. 356, 6 Sup. Ct. 1064, 30 L. Ed. 220. The court in dicta suggests that as the object of the statute is desirable it may be possible to secure a patent or copyright under the federal law, but gives no opinion.

CONVERSION—TIME OF CONVERSION—PLEDGES—ASSERTION OF TITLE.—The directors of a corporation adopted a resolution authorizing the corporation to borrow money on its ten bonds to be issued, these bonds to be negotiated by the president for the benefit of the corporation. The secretary of the corporation pledged the bonds, when issued, to defendant as security for personal loans made and to be made, with full knowledge on the part of defendant that these bonds were authorized only for corporate purposes and were to be negotiated only by the president of the corporation. Later defendant transferred the bonds to a bank in consideration of the bank's discharge of the debt due defendant from the secretary, the bank being also a creditor of the secretary and obtaining the bonds for the sake of an equity in them over the amount due from the secretary. In an action for the conversion of the bonds, *held*, that defendant's conversion dated from its transfer to the bank and not from the time the bonds were wrongfully pledged by the secretary. *Macdonnell* v. *Buffalo Loan, Trust & Safe Deposit Co.* (1908), — N. Y. —, 85 N. E. 801.

The majority of the court hold that defendant's knowledge, of itself, did not constitute conversion, since defendant could still elect to hold the bonds